

The State of South Carolina



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Johnny Mack Brown, Sheriff
Greenville County Sheriff's Department
4 McGee Street
Greenville, South Carolina 29601

Dear Sheriff Brown:

You have inquired as to the propriety of city police officers making "drug purchases outside the city limits." Of particular concern to you is the fact that neither you nor your department receives notice of such activity and your office is not involved in such operations and does not consent thereto. I assume from your letter that such activity is part of undercover police operations. It is obvious that the fact that one is a police officer does not give him license to violate the drug laws of this State.

It is well established that a city police officer has no authority to arrest outside the city limit, unless he is in pursuit, and then he may arrest within a three mile radius of the corporate boundaries. See, Section 17-3-40, Code of Laws of South Carolina (1976 as amended). This does not necessarily mean, however, that a municipal police officer may not work undercover in conducting a drug operation outside the limits of his jurisdiction. We have found a number of cases in other jurisdictions where such has been sanctioned by the courts and arrests by the particular officer operating outside his jurisdiction have been upheld.

For example, in McAnniss v. Florida, 386 So. 2d 1230 (Fla.1980), a city police officer participated in an undercover drug operation outside his jurisdiction. He detained the individual attempting to make the drug purchase until county police arrived. The Court upheld the officer's arrest of the individual, noting that he arrested the offender "as a citizen, rather than a Broward police officer." 386 So. 2d at 1232. And in People v. Bloom, 577 P. 2d 288 (Col. 1978), a police officer participated in a drug task force operation. The officer arrested a drug purchaser outside his own jurisdiction, but again the Court upheld the arrest on the basis that, as a private citizen, the officer possessed the power to arrest.

REQUEST LETTER

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In Meadows v. State, 655 P. 2d 556 (Okla. 1982), members of a police force, were under instructions "to pursue any drug cases which affected Canadian County, no matter where they ultimately lead." An officer conducted an investigation outside his jurisdiction and subsequently arrested an individual outside that jurisdiction. The Court upheld the arrest as valid and in so doing stated that the officer

... was merely investigating illegal drug activities that were brought to his attention, while he was acting within his jurisdiction. Generally, a police officer's authority outside his jurisdiction is no greater than that of a private citizen ... Here, we find that Officer Thompson was acting as a private citizen. During the entire drug investigation, Officer Thompson was not acting under color of law. He did not hold himself out as a police officer. At no time during his investigation did any of the participants know Thompson's official identity... Thompson's activities were no different from what a private citizen could have done had he been informed of possible illegal drug activities. Thompson, while acting as a private citizen, investigated the source of the drug distribution and informed the local law enforcement authorities about the criminal activities. Based upon Thompson's information, the Oklahoma County Sheriff's Office obtained an arrest warrant and effectuated a lawful arrest within their jurisdiction. Therefore, we hold that Meadows arrest was lawful. 655 P. 2d at 557.

It is important to emphasize that in each of the cases cited, law enforcement officers were engaged in legitimate undercover operations as police officers although they were acting outside their jurisdiction; in none of the cases found was the law enforcement officer using his Office as a means of circumventing the drug laws. Moreover, in each of these cases arrests were effectuated as a result of extensive cooperation between the undercover officer and the law enforcement agencies in the jurisdiction where the arrests were made.

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In Meadows v. State, supra, for example, the undercover officer provided information to the local prosecutor's office as he proceeded with his investigation. In People v. Bloom, supra, there existed extensive cooperation among all law enforcement agencies which were part of the drug task force. And in State v. Shipman, 370 So. 2d 1195 (Fla. 1979), another similar case, the undercover officer immediately contacted the local Sheriff's Office to let that office know he was operating in the area; the local sheriff "agreed to assist in monitoring the transaction." 370 So. 2d at 1195.

We are not aware of any statute or provision of law in this State which absolutely requires an officer working undercover in another jurisdiction to notify the law enforcement agency or police department in that jurisdiction. 1/ By comparison, in at least one other state, a police officers' authority to arrest extends statewide so long as the officer has

... the prior consent of the chief of police, marshal, sheriff or other department or agency head with peace officer jurisdiction, or his duly authorized representative having the primary responsibility for law enforcement within the jurisdiction or territory.

Arizona Revised Laws, §13-1361. See also, State v. LeMatty, 590 P. 2d 449, 453 (Ariz. 1979). 2/

1/ By contrast, Section 5-7-120 provides in pertinent part that "[t]he governing body of any municipality may upon the request of the governing body of any other political subdivision of the State send any law enforcement officers to such requesting political subdivisions in cases of emergency." Obviously, the General Assembly contemplated cooperation between law enforcement agencies.

2/ In LeMatty, supra, the Court construed Section 13-1361 to preclude "police activities" (except service of warrant) without the consent of the law enforcement agency principally responsible for the jurisdiction.

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While South Carolina has no such statute or similar provision making mandatory notice to or consent by the local law enforcement agency, obviously close cooperation between various law enforcement departments or agencies is as necessary and desirable here as it was in the cases we have cited above. South Carolina law relating to arrest by a citizen, the mechanism used by other courts to validate arrests made outside an officer's jurisdiction, authorizes any citizen to arrest an individual for a felony 3/ and to take that individual to local law enforcement authorities. Section 17-13-10; see also, Burton v. McNeill, 196 S.C. 250, 13 S.E. 2d 10 (1941). Moreover, it is apparent that notice by the undercover officers to local law enforcement agencies in the area would surely make any undercover operation more effective. As the Court stated in State v. Richards, 110 Ariz. 290, 518 P. 2d 113 (1974), "cooperation between law enforcement agencies is essential to effective law enforcement." And, of course, such cooperation, if consistently adhered to, would avoid any appearance that the officer is violating the drug laws or any other laws of the State. 4/

3/ We make no comment as to whether any particular violation would be a felony or misdemeanor under applicable South Carolina law. Such would obviously depend upon the individual circumstances. However, we would note that many of the drug offenses in this State are classified as misdemeanors. See, §44-53-370 et seq.

4/ The LeMatty case raised this as a potential problem. The Court observed:

Since the issue was not raised by the facts of this case, we make no determination of the question whether an undercover policeman purchasing drugs while outside his jurisdiction without prior consent of the relevant authorities under A.R.S. 13-1361 could, if arrested after sale, be charged with and prosecuted for unlawful possession of dangerous drugs. 590 P. 2d at 453, n.5. Again however, South Carolina has no such statute but there may be circumstances where if local law enforcement officers are notified that an undercover operation is going on in their area, there would be no misunderstanding as to undercover officer's motive in purchasing drugs.

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One Court has recently commented on potential problems which are encountered in similar situations to the one which you have described. In State v. Shipman, supra, while the Court upheld the arrest by the undercover officer operating outside his jurisdiction on the basis that the arrest he made was as a citizen and not "under color" of his office, 5/ the Court nevertheless cautioned that such a rationale was not the best one. The Court's comments are particularly instructive here:

We recognize the legitimate need of police officials to detect, follow and arrest offenders wherever they may go, especially in today's society where illicit drug operations and other organized criminal activities are not conveniently conducted within the confines of a single jurisdiction. However, it would appear that there are numerous official ways whereby police authorities may be deputized or granted extra territorial police powers when it becomes necessary. It seems rather ludicrous for police officials to have to rely on a citizen's authority to justify an arrest made in the culmination of an official police operation.

370 So. 2d at 1197. The Court's words make good sense. Implicit, if not express in the foregoing language is the fact that it is essential in this day and age that law enforcement agencies fully cooperate with one another in order to effectively combat crime. This is particularly the case with respect to enforcing the drug laws.

5/ Courts have held that a police officer acting "under color" of office, but outside his jurisdiction may not make an arrest; in other words, he must be acting as a citizen. A police officer is generally acting under color of his office by

... actually holding himself out as a police officer, either by wearing his uniform or in some other manner openly advertising his official position in order to observe the unlawful activity involved

State v. Shipman, 370 So. 2d at 1196-1197.

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In conclusion, we have not found any statute or provision of law that absolutely mandates or requires municipal police officers working undercover in drug operations outside their jurisdiction to notify or have the consent of the law enforcement agency in that jurisdiction. Nor can we say that such activity is in every instance illegal or improper. Indeed, the cases we have found where such has occurred have upheld the arrests resulting from such activity; and the Courts have recognized such activity, where done in the course of official law enforcement operations to be a "legitimate need of police officials." But we caution, as several Courts have done, that complete cooperation among the law enforcement agencies involved is both necessary and desirable; and we urge that deference be given to the law enforcement agency having the primary responsibility in the particular area. 6/

If we can be of further assistance, please let us know. With kindest regards, I remain

Very truly yours,



Robert D. Cook
Executive Assistant for Opinions

RDC:bvc

cc: Harold C. Jennings, Chief of Police

6/ While we conclude that such an arrangement is not absolutely prohibited, that is not to say a law enforcement agency contemplating having its officers conduct undercover operations outside its jurisdiction should not carefully consider the wide variety of problems which such an operation could raise. Obviously, questions such as civil liability, insurance, etc., could arise where the officer acts only with such authority as a citizen possesses.